

RESOLUTION ESTABLISHING
“NO-FAULT” SEWER BACKUP REIMBURSEMENT POLICY

WHEREAS, the City of Rochester affords municipal sanitary sewer services to many of the property owners within the City; and,

WHEREAS, there have been instances where the City's sanitary sewer system has experienced unexpected and unusual backup blockages that have resulted in the backup of sewage into properties that are connected to those City sanitary sewer lines; and,

WHEREAS, as a result of these sewer backups, property owners have incurred damages to their property and have invested considerable time and financial resources in cleaning up the resulting mess; and,

WHEREAS, it is not easy to determine the exact cause and responsibility for municipal sanitary sewer backups; and,

WHEREAS, Minnesota law does not require the City to guarantee the safe and proper operation of its sanitary sewer system. Instead, the law requires the City to exercise reasonable and ordinary care in the operation of its sanitary sewer system. Reasonable and ordinary care cannot contemplate or anticipate unusual acts of God such as heavy rainstorms and floods; and,

WHEREAS, the City, despite the absence of any legal duty to provide assistance to property owners who have been damaged by these sewer backups, nonetheless wishes to provide some assistance to its citizens who have incurred damages as a result of these backups. The City is compelled to assist those who have incurred damages as a result of sewer backups occurring through no fault of their own; and,

WHEREAS, sewer backups into property pose a public health and safety concern. The City wishes to encourage the expeditious clean up of properties that have encountered sewer backups; and,

WHEREAS, in an effort to encourage the timely clean up of property damaged by sewer backups and to provide limited assistance to its citizens damaged by sewer backups, the City of Rochester desires to establish a program offering financial reimbursement to those damaged property owners; and,

WHEREAS, on August 19, 2007 the Governor of the State of Minnesota issued a State of Emergency Declaration for Olmsted County as a result of the significant rainfall and the resulting damage to public and private property, and

WHEREAS, this resolution is intended to set forth the terms and conditions of a NO-FAULT Sewer Backup Reimbursement Policy for those properties connected to city utilities that experienced sewer backups on Saturday, August 18, 2007, and Sunday, August 19, 2007, or until such other time as may be established by a subsequent City Council resolution.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Rochester that the City establish the "NO-FAULT" Sewer Backup Reimbursement Policy as follows:

1. For purposes of this resolution, the term "NO-FAULT" means the City will reimburse a property owner for up to \$10,000 of clean-up costs and building damages caused by a city sanitary sewer backup, irrespective of whether the City was negligent or legally liable for those damages.
2. For purposes of this resolution, the term "sewer back-up" means any back-up of sewage or stormwater from a City owned and maintained sanitary sewer or sewer forcemain or stormwater subdrain system.
3. This Policy is intended to do several things;
 - a. To reduce health hazards by encouraging property owners to get sewer back-ups cleaned up as quickly as possible.
 - b. To reduce the frequency and severity of sewer back-up lawsuits as property owners will be less inclined to sue the city if they receive conciliatory treatment at the time of the back-up.
 - c. To give the City a way to address the likelihood that the City's insurance provider will not reimburse a property owner for the sewer back-up damages because the City was not negligent and is therefore not legally liable.
4. This Policy will reimburse the property owner for sewer back-up damages, regardless of whether the city was legally liable, if all of the following conditions are met:
 - a. The back-up must have resulted from a condition in the city's sewer system or lines. A backup caused by a clog or other problem in the property owner's own line is not covered.
 - b. It's not one of the situations that is specifically excluded by this Policy.
 - c. The coverage limit of \$10,000 per building per year has not been exceeded.
 - d. The property owner must file sufficient documentation required by the City Engineer to prove the sewer back-up, the lack of insurance coverage and

the associated damages that occurred at the property owner's building.

- e. The value of the damaged property must be substantiated.
- f. The property owner executes a Release, in a form approved by the City Attorney, whereby the property owner agrees to waive any and all legal claims the owner may have against the City arising out of:
 - (1) the backup or blockage that occurred in the City's sanitary sewer line that resulted in a backup of sewage onto the property owner's building;
 - (2) the manner in which this Policy was administered; and
 - (3) the decisions that were made as a result of the administration of this Policy.
- 5. Repairs to damaged mechanical equipment essential to the habitation of the property are eligible for reimbursement under this Policy. If the damaged equipment cannot reasonably be repaired, the cost to replace the damaged equipment will be eligible for reimbursement under this Policy.
- 6. This no-fault sewer back-up coverage will reimburse the property owner for the cost of cleaning up the back-up, and for any damage to the building, and its mechanical components, up to the \$10,000 coverage limit.
- 7. Lost or damaged personal property or possessions are not eligible for reimbursement under this Policy.
- 8. Costs that are or will be eligible to be covered under the property owner's own homeowner's or other property insurance, as well as the City's insurance, are not eligible for reimbursement under this Policy.
- 9. The claim limit is \$10,000 per building per year. For purposes of the limit, a structure or group of structures that is served by a single connection to the city's sewer system will be considered a single building.
- 10. The City Council adoption of this Resolution makes this no-fault sewer back-up protection part of the service agreement between the city and the sewer customer. The idea is that by paying his sewer bill, the sewer user is purchasing not just sewer service but also the right to be reimbursed for certain specified sewer back-up costs and damages. In other words, the basis for the no-fault payments to the property owner would be existence of a service contract between the city and the sewer user.
- 11. A property owner receiving reimbursement under this Policy will be required to

install, from a list provided by the City, a sewer backflow prevention device. The cost of the device and its installation is eligible for reimbursement under this Policy. If the property owner fails to install and show proof of routine maintenance of the sewer backflow prevention device at the time of a future sewer backup, the property owner will not be eligible to seek reimbursement for a future sewer back-up under this Policy.

12. The City Council has the exclusive final decision making authority in this Policy's implementation or administration.

BE IT FURTHER RESOLVED that, as this City Council adopted this Policy in a very short time period in response to an unprecedented and extraordinary weather event, the Council reserves the right to make changes to or to rescind the Policy without advance notice should it determine, in its sole discretion, that the public's interests are best served by such changes or rescission. This Policy does not create any vested property rights in any citizen of the City of Rochester and does not permit anyone to claim the status of third party beneficiary.

BE IT FURTHER RESOLVED that this Policy will become effective upon its passage.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF
ROCHESTER, MINNESOTA, THIS _____ DAY OF _____, 2007.

PRESIDENT OF SAID COMMON COUNCIL

ATTEST: _____
CITY CLERK

APPROVED THIS _____ DAY OF _____, 2007.

MAYOR OF SAID CITY

(Seal of the City of
Rochester, Minnesota)